Insas Bhd & Anor v Ayer Molek Rubber Co Bhd & Ors

FEDERAL COURT (KUALA LUMPUR) — CIVIL APPLICATION NO 08-48 OF 1995
EUSOFF CHIN CHIEF JUSTICE, ZAKARIA YATIM FCJ AND PS GILL J
12 AUGUST 1995

Civil Procedure *— Adjournment — Appeal against — Hearing of application to set aside mandatory injunction adjourned to date past date of compliance — Stay of injunction refused — Whether aggrieved party could appeal against judge's order to adjourn hearing — Rules of the High Court 1980 O 35 r 3*

Civil Procedure *— Functus officio — Application to set aside mandatory injunction — Application for stay pending appeal refused — Injunction complied with — Application for stay withdrawn — Whether court functus officio*

Legal Profession *— Professional discipline — Abuse of process of court and unethical conduct — Whether proper for judge to make criticism in judgment — Whether proper step is to lodge report with Legal Profession Disciplinary Board — Legal Profession Act 1976 s 99(2)*

On 10 April 1995, the applicants obtained an ex parte mandatory injunction from the High Court ('the High Court order') to compel the respondents to register the transfer of 540,000 shares of the Ayer Molek Rubber Co Bhd ('the first respondent'), and to issue new share certificates in the applicants' name, within two working days. On 12 April 1995, the respondents filed a summons-in-chambers in the High Court to set aside the High Court order. After hearing arguments from both parties on the same day, the judge adjourned the hearing to 27 April 1995. The respondents' application for a stay of the High Court order pending the hearing of their application on 27 April 1995 was refused. The respondents then applied to the President of the Court of Appeal, but their application was also refused. Meanwhile, the shares were registered in the applicants' name in compliance with the High Court order, on 14 April 1995. On 18 April 1995, the respondents filed a notice of appeal to the Court of Appeal against the decision of the High Court adjourning the hearing of the respondents' application, and a motion for a stay of the High Court order, pending the disposal of their appeal to the Court of Appeal. The Court of Appeal granted an interlocutory injunction to the respondents restraining the applicants from exercising any rights attached to the shares pending disposal of the appeal before the Court of Appeal ('the Court of Appeal order'). [See [1995] 2 MLJ 734.] The respondents' counsel had earlier withdrawn his application to set aside the High Court order, on the grounds that the order had already been executed and lapsed. The applicants made an application to the Federal Court for leave to appeal to the Federal Court against the Court of Appeal order. The applicants had

also requested that the criticism made by the Court of Appeal against the High Court judge, the applicants and their counsel in its written judgment be expunged.

Held, allowing the applications:

(1) As the respondents had withdrawn their application to set aside the High Court order, it was deemed that they had conceded that it had been rightly granted. Thus the foundation and substratum of the appeal had collapsed, and the respondents could not proceed with their appeal against the High Court order. The respondents also could not appeal against the judge's order to adjourn the hearing because he was given power to do so under O 35 r 3 of the Rules of the High Court 1980.

(2) The Court of Appeal could only exercise appellate jurisdiction and hear appeals from the judgments of the courts below. Since the respondents had withdrawn their application for stay of the High Court judgment, the Court of Appeal was functus officio. It was irregular and improper for the Court of Appeal to entertain the respondents' application and grant the order.

(3) The Appellate and Miscellaneous Division of the High Court may hear all cases the disposal of which do not involve the calling of witnesses to give oral evidence. However, where a suit is pending in the Commercial Division, the hearing of which involves the calling of witnesses for oral evidence, then any application pending the hearing should be filed in the Commercial Division.

(4) The offensive remarks made by the Court of Appeal against the High Court, the applicants and their counsel ought to be expunged from the judgment of the Court of Appeal, as it had a tendency to bring the whole administration of law and order in the courts into disrepute. Judicial pronouncements should be judicial in nature and should not depart from sobriety, moderation, and reserve. It also should not display emotion and intemperance, as displayed in the judgment of the Court of Appeal.

Obiter:

In the event that judges and magistrates find that an advocate handling any matter before them has grossly abused the process of court or acted in a highly unethical manner, they should lodge a report with the Disciplinary Board established under s 99(2) of the Legal Profession Act 1976, which will investigate the complaint and will give the parties a fair opportunity to state their cases.

[Bahasa Malaysia summary

Pada 10 April 1995, pemohon telah mendapat suatu injunksi mandatori ex parte daripada Mahkamah Tinggi ('perintah Mahkamah

A Tinggi') untuk memaksa responden untuk mendaftarkan pemindahan 540,000 syer Ayer Molek Rubber Co Bhd ('responden pertama'), dan untuk mengeluarkan sijil syer yang baru dalam nama pemohon, dalam masa dua hari kerja. Pada 12 April 1995, responden telah memfailkan suatu saman dalam kamar untuk mengenepikan perintah
B Mahkamah Tinggi tersebut. Selepas mendengar hujah daripada kedua-dua pihak pada hari yang sama, hakim telah menangguhkan perbicaraan kepada 27 April 1995. Permohonan responden untuk menggantung perintah Mahkamah Tinggi tersebut sementara menunggu perbicaraan permohonannya pada 27 April 1995 telah ditolak. Responden kemudiannya memohon kepada Presiden
C Mahkamah Rayuan, tetapi permohonan mereka juga ditolak. Sementara itu, syer tersebut telah didaftarkan dalam nama pemohon menurut perintah Mahkamah Tinggi, pada 14 April 1995. Pada 18 April 1995, responden telah memfailkan suatu notis rayuan kepada Mahkamah Rayuan terhadap keputusan Mahkamah Tinggi yang
D menangguhkan perbicaraan permohonan responden, dan suatu usul untuk penggantungan perintah Mahkamah Tinggi, sementara menunggu penyelesaian rayuan mereka ke Mahkamah Rayuan. Mahkamah Rayuan telah memberikan injunksi interlokutori kepada responden untuk menyekat pemohon daripada melaksanakan sebarang hak di bawah syer tersebut sementara menunggu penyelesaian rayuan
E di Mahkamah Rayuan ('perintah Mahkamah Rayuan'). [Lihat [1995] 2 MLJ 734.] Responden sebelum itu telah menarik balik permohonannya untuk mengenepikan perintah Mahkamah Tinggi, atas alasan bahawa perintah tersebut telahpun dilaksanakan dan luput. Pemohon telah membuat suatu permohonan ke Mahkamah Persekutuan bagi kebenaran untuk membuat rayuan ke Mahkamah
F Persekutuan terhadap perintah Mahkamah Rayuan. Pemohon juga telah meminta supaya kecaman yang dibuat oleh Mahkamah Rayuan terhadap hakim Mahkamah Tinggi, pemohon dan peguam di dalam penghakiman bertulis mereka dipadamkan.

G **Diputuskan**, membenarkan permohonan itu:

(1) Oleh kerana responden telah menarik balik permohonan mereka untuk mengenepikan perintah Mahkamah Tinggi, boleh dianggap bahawa responden telah bersetuju bahawa perintah itu telah diberikan dengan betul. Maka, asas dan substratum rayuan telah
H musnah, dan responden tidak boleh meneruskan rayuan mereka terhadap perintah Mahkamah Tinggi. Responden juga tidak boleh merayu terhadap perintah hakim yang menangguhkan perbicaraan kerana beliau diberikan kuasa untuk berbuat demikian di bawah A 35 k 3 Kaedah-Kaedah Mahkamah Tinggi 1980.

(2) Mahkamah Rayuan hanya boleh menjalankan bidang kuasa rayuan
I mereka dan membicarakan rayuan terhadap penghakiman dari mahkamah di bawah. Oleh kerana responden telah menarik balik permohonan mereka untuk penggantungan perintah Mahkamah

Tinggi, Mahkamah Rayuan telah menjadi funtus officio. Adalah luar aturan dan tidak wajar bagi Mahkamah Rayuan melayan permohonan pemohon dan membenarkan perintah itu.

(3) Bahagian Rayuan dan Pelbagai Perkara Mahkamah Tinggi boleh membicarakan kesemua kes yang boleh diselesaikan tanpa memanggil saksi untuk memberi keterangan lisan. Walau bagaimanapun, jika terdapat sesuatu guaman yang menunggu penyelesaian di Bahagian Dagangan, di mana saksi kena dipanggil untuk memberi keterangan lisan di dalam perbicaraannya, maka sebarang permohonan sementara menunggu penyelesaian guaman tersebut harus difailkan di Bahagian Dagangan.

(4) Teguran-teguran yang kesat yang telah dibuat oleh Mahkamah Rayuan terhadap Mahkamah Tinggi, pemohon, dan peguam mereka harus dipadamkan daripada penghakiman Mahkamah Rayuan, oleh kerana ia mempunyai kecenderungan untuk memberi nama buruk kepada keseluruhan pentadbiran undang-undang dan aturan di dalam mahkamah. Pengumuman kehakiman harus bersifat kehakiman, dan tidak patut menyimpang daripada keseriusan, kesederhanaan dan sikap was-was. Ia juga tidak patut menunjukkan emosi dan keterlaluan sepertimana yang telah ditunjukkan di dalam penghakiman Mahkamah Rayuan.

Obiter:

Jikalau hakim dan majistret mendapati bahawa seseorang peguambela yang telah mengendalikan sebarang perkara di hadapan mereka telah menyalahgunakan proses mahkamah secara terlampau atau telah bertindak dalam cara yang amat tidak bertatasusila, mereka seharusnya membuat suatu laporan dengan Lembaga Tatatertib yang ditubuhkan di bawah s 99(2) Akta Profesyen Undang-Undang 1976, yang akan menyiasat aduan itu dan memberikan pihak-pihak yang berkenaan peluang yang adil untuk menyampaikan kes mereka.]

Notes

For cases on adjournment, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 114–120.

For cases on functus officio, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1409–1412.

For cases on professional discipline, see 9 *Mallal's Digest* (4th Ed) paras 1411–1493; [1989] Mallal's Digest 991–995; [1991] Mallal's Digest 1460–1468; [1992] Mallal's Digest 1309–1320; [1992] Mallal's Digest 1032–1038.

Cases referred to

AM Mathur v Pramod Kumar Gupta & Ors [1990] 2 SCC 533 (folld)
Singer Sewing Machine v Jeremiah [1972] 2 MLJ 56 (folld)

A *State of Madya Pradesh & Ors v Nandlal & Ors* [1986] 4 SCC 566 (folld)
State of Uttar Pradesh v Mohd Naim 1964 AIR SC 703 (folld)
V Sujatha v State of Kerala [1994] SCC Supp (3) 437 (folld)

B **Legislation referred to**
Courts of Judicature Act 1964 ss 43, 44
Legal Profession Act 1976 s 99(2)
Rules of the Court of Appeal 1994 rr 14, 27, First Schedule
Rules of the High Court 1980 O 35 r 3

C **Appeal from**: Civil Appeal No W2–02–187–1995 (Court of Appeal)

VK Lingam (*S Siva Poram Jothy* and *Adam Bachek* with him) (*VK Lingam & Co*) for the applicants.
Loh Siew Cheang (*Loo Foong Meng*, *Ranjit Singh* and *Evelyn Khoo* with
D him) (*Cheang & Ariff*) for the respondents.

Eusoff Chin Chief Justice (delivering the grounds of judgment of the court): On 1 August 1995, we granted the applicants, Insas Bhd and Megapolitan Nominees Sdn Bhd, leave to appeal to the Federal Court against the order of the Court of Appeal given on 26 July 1995, which
E granted an interlocutory injunction to the respondents restraining the applicants from exercising or enjoying rights including disposing of the shares whether directly or indirectly, pending the disposing of an appeal before the Court of Appeal. We also granted a stay of execution of the order of the Court of Appeal and gave the applicants two weeks to file a
F notice of appeal to the Federal Court.

The factual background of the case is as follows:

(1) On 10 April 1995, the plaintiffs (applicants) applied for and were granted an ex parte mandatory injunction by the High Court. This injunction compelled the eleventh defendant who is the share registrar
G of Ayer Molek Rubber Co Bhd ('the company'), to process the plaintiffs' 540,000 shares within two working days, and the managing director and secretaries of the company were ordered to issue within two working days five new share certificates in the name of the plaintiffs, and the other defendants were restrained from interfering, interrupting or causing any hindrance in any manner whatsoever in
H the registration of the shares.

(2) On 11 April 1995, the injunction order was served on most of the defendants.

(3) On 12 April 1995, the defendants filed an ex parte summons-in-chambers to set aside the ex parte injunction granted.

I (4) On 13 April 1995, this ex parte summons-in-chambers was made inter partes and it was served on the plaintiffs' solicitors at 12 noon. It was heard by the learned judge at 2pm on the same day.

The plaintiffs' counsel requested for an adjournment to enable them sufficient time to file an affidavit-in-reply because the defendants' affidavit had been served on the plaintiffs' solicitors only at 12 noon that day. The judge after hearing arguments from both parties, adjourned the inter partes hearing to 27 April 1995, for him to make a decision, as that was the earliest date available, whereupon the defendants' solicitors applied for a stay of the mandatory injunction pending the hearing of their application on 27 April 1995, but the judge refused to grant the stay.

(5) On 14 April 1995, the defendants made an application to the learned President of the Court of Appeal for a stay of the High Court order, pending the hearing of their motion for stay in the Court of Appeal. The learned President did not grant the stay.

(6) Meanwhile, on the same day (14 February 1995), the shares were registered into the names of the plaintiffs in compliance with the order of the High Court.

(7) On 18 April 1995, the defendants filed a notice of appeal to the Court of Appeal against the decision of the learned judge of the High Court adjourning the hearing of the defendants' application from 13 April 1995 to 27 April 1995 (hereinafter 'the appeal'). On the same day, the defendant also filed a motion in the Court of Appeal for a stay of the ex parte injunction given by the High Court on 10 April 1995, pending the disposal of their appeal to the Court of Appeal.

(8) On 21 April 1995, the High Court informed the parties that the hearing fixed for 27 April 1995, had to be adjourned to 11 May 1995, because the High Courts were shifting office to another building at Denmark House, in Jalan Ampang.

(9) On 11 May 1995, the defendants' counsel, in open court, *withdrew* the defendants' application to set aside the ex parte mandatory injunction granted on 10 April 1995. The learned High Court judge allowed the withdrawal of the application with no order as to costs. An application by the defendants to strike out the plaintiffs' indorsed writ was adjourned with the consent of parties to be heard together with the striking out of the statement of claim on 22 June 1995. This was adjourned to 7 August 1995 at the request of the plaintiffs.

When the respondents' application for the stay of the ex parte mandatory injunction made by the High Court on 10 April 1995 came up for hearing before the Court of Appeal on 24 July 1995, the learned counsel for the respondents, Mr SC Loh *withdrew* the respondents' application for the stay of ex parte mandatory injunction. We asked Mr SC Loh why he withdrew the respondents' application to set aside the ex parte injunction order granted on 10 April 1995. He told us it was because the ex parte order had been executed, and the ex parte order had lapsed under the Rules of the High Court 1980, two weeks after the ex parte order was made. We inquired whether had he not withdrawn the respondents'

application to set aside the ex parte order, the learned High Court judge could have heard it on 11 May 1995, and might have reversed his ex parte injunction order and returned the parties' positions to status quo. Now that the respondents had withdrawn their application to set aside the ex parte order, it is deemed that the respondents *conceded* that the High Court had rightly granted the ex parte order. How could the respondent then proceed with their appeal against the order of the learned High Court judge made on 13 April 1995, adjourning the case from 13 April 1995 to 27 April 1995, since the respondent had conceded the ex parte order was correctly made? The foundation and substratum of the appeal had collapsed. As we know it, a court has power to adjourn a hearing as is given to it under O 35 r 3 of the Rules of the High Court 1980. Mr SC Loh did not produce any authority to show us that a party may appeal against the order of a judge to adjourn the hearing of any matter before him. We ourselves are not aware of any case in which an appeal had been allowed to be made against an order of adjournment for decision or further arguments of a case by even a magistrate. If this is allowed, an appeal will be filed for every adjournment made by a magistrate, sessions court judge, High Court judge, or even by the Court of Appeal, and the courts will be flooded with appeals on adjournments. The Court of Appeal in this case itself had done the same thing in this appeal. It had adjourned the hearing of the application for a fresh injunction twice, once from 24 July 1995 to 25 July 1995, and then again to 26 July 1995. Can these adjournments then be the subject of appeals to the Federal Court? At the most, frequent adjournments of a case for no good reason may be made as one of the grounds in an appeal proper. We are doubtful if an appeal can be sustained against an order of adjournment by a judge. We made these inquiries because we wanted to find out if there are good grounds upon which we may decide whether or not to allow the applicants' application for leave to appeal to the Federal Court from the order of the Court of Appeal granting an oral application by the respondents' learned counsel for an interim injunction to restrain the applicants from enjoying or exercising any rights including disposing of the shares whether directly or indirectly, pending the disposal of the respondents' appeal before the Court of Appeal against the decision of the learned High Court judge made on 13 April 1995, adjourning the hearing from 13 April 1995 to 27 April 1995.

The oral application for the interim injunction by Mr SC Loh on 24 July 1995, was made after he had withdrawn the motion to stay the ex parte mandatory injunction before the Court of Appeal. From the judgment of the Court of Appeal, a copy of which was tendered to us by Mr SC Loh at the start of the hearing before us on 1 August 1995, we note that no undertaking as to damages was given to the Court of Appeal by either Mr SC Loh as solicitor or by the respondent when applying for the fresh injunction. Mr SC Loh told us that the shares concerned had been seized by the police for the purpose of police investigation. We asked him if that fact was conveyed to the judges of the Court of Appeal when he made the oral application before them for the interim injunction. Mr SC Loh confirmed that he had done so. If that was the case, where was

the urgent need for the interim injunction to be issued by the Court of Appeal.

The learned counsel for the applicant, Dato' VK Lingam, drew our attention to s 43 of the Courts of Judicature Act 1964 and r 14 of the Rules of the Court of Appeal 1994, which stated that whenever an application can be made to either the High Court or to the Court of Appeal, it shall be made in the first instance to the High Court, and r 27 of the Rules of the Court of Appeal 1994, requires that all applications to the Court of Appeal must be made by motion substantially in Form 4 of the First Schedule with affidavits filed and served on all parties and the notice of motion shall be served on the parties concerned not less than seven days before the return day. Mr SC Loh contended that the Court of Appeal was acting under their inherent jurisdiction and under s 44 of the Courts of Judicature Act 1964. We do not wish to deal with the merits of the intended appeal here by the applicant, but we find good reasons that s 44 of the Courts of Judicature Act 1964 does not apply here. Further, the Court of Appeal only exercises appellate jurisdiction and hears appeals from orders and judgments of the courts below. Therefore, it does not deal with original applications. We therefore allowed this application for leave to appeal by the applicants against the interim injunction ordered by the Court of Appeal on 26 July 1995, and ordered that the notice of appeal to the Federal Court be filed within two weeks from 1 August 1995.

As stated earlier, Mr SC Loh had tendered to the court and to Dato' VK Lingam a copy each of the judgment of the Court of Appeal dated 31 July 1995, written by NH Chan JCA. This is what the judgment states in its opening paragraph: 'This is an application by the appellants to stay an ex parte mandatory injunction pending appeal to the Court of Appeal.'

Since the respondents (appellants in the Court of Appeal) had in the Court of Appeal withdrawn their application for stay of the mandatory injunction, there was no more application left for the Court of Appeal to deal with, and the application should have been dismissed, and the Court of Appeal was thereafter functus officio. We agreed that Mr SC Loh did the right thing, because when he withdrew in the High Court his application to set aside the mandatory injunction, it is deemed that he had conceded that the mandatory injunction had been properly made. Consequently, his appeal against the learned High Court judge's adjourning the case from 13 April 1995 to 27 April 1995 had no leg to stand on. But the Court of Appeal went on to entertain an oral application by Mr SC Loh from the Bar, and to deal with the merits of the case, and granted the application. This is wholly irregular and improper. The respondents' appeal against the High Court's adjourning the hearing after hearing arguments from both parties from 13 April 1995 to 27 April 1995, was not even before the Court of Appeal, as it had not been fixed for hearing on that day.

The learned counsel for the appellants, Dato' VK Lingam, had strongly objected to the derogatory criticism by the Court of Appeal in its written judgment and to the aspersions cast on the professional conduct of

A the appellants' solicitors, as they were not only made without jurisdiction but were also wholly and utterly unjustified and unwarranted. He requested that all these remarks and criticism made by the three judges of the Court of Appeal in their judgment against the High Court judge, the applicants and their solicitors, should be expunged from the judgment.

B We scrutinized the record before us to see if there is any evidence which prompted the Court of Appeal judges to make these derogatory and unwarranted remarks. We find that these remarks had been made suo motu without any basis. We asked Mr SC Loh, the learned counsel for the respondents if he had appeared at all stages of the proceedings. He replied he did. We asked him if he had ever objected to the applicants' case being C heard by the Appellate and Miscellaneous Division of the High Court. He replied he never raised any objection. We further asked him if he had ever raised any objection to the learned High Court judge, Azmel J, hearing the application, and he replied he did not. We finally asked him whether, in the Court of Appeal, he ever raised any of these objections, and again he D replied that he did not do so. He also admitted and confirmed that he never at any stage of the proceedings criticized the conduct of the learned solicitors for the applicants which could cause the three learned judges of the Court of Appeal to attack the appellants' counsel. Then why should the learned judges of the Court of Appeal go on a frolic of their own to find fault with the High Court judge, and criticize the conduct of the applicants' E solicitors in a very disparaging manner. Their own conduct would tend to show that they were themselves biased and taking the side of the respondents against the applicants, the High Court judge and the applicants' solicitors.

It appears that the three judges of the Court of Appeal were not happy because the case was heard by the Appellate and Miscellaneous F Division of the High Court, because they felt that it ought to have been heard by the Commercial Division. As far as we are aware, the Appellate and Miscellaneous Division may hear all cases, the disposal of which do not involve the calling of witnesses to give oral evidence. However, where a suit is pending in the Commercial Division, the hearing of which involves the calling of witnesses for oral evidence, then any application pending the G hearing, should be filed in Commercial Division. We do not find any good and sufficient reason as to why the three judges of the Court of Appeal should launch a scathing attack on the High Court judge for hearing the case when the learned counsel for the respondents (defendants) in the first place had not raised any objection to the judge, or the division proceeding H with the case.

The objectionable and wholly offensive remarks made against a court of law, the plaintiffs and their solicitors, and the learned High Court judge, all of whom had had no opportunity to defend themselves in the face of such unwarranted and unjustified criticisms, ought to be expunged from the judgment of the Court of Appeal, as it has a tendency to bring the I whole administration of law and order in the courts into disrepute. It is judicially recognized that judicial pronouncements should be judicial in nature and not depart from sobriety, moderation, and reserve. It has been said elsewhere that the pen of a judge should be like the knife of a surgeon

which probes into the flesh only as much as is absolutely necessary for the purpose of the case before it. A judge should neither reward virtue nor chastise vice, and his judgment should not display emotion and intemperance as displayed in the judgment of the Court of Appeal here.

In *State of Uttar Pradesh v Mohd Naim* 1964 AIR SC 703 at pp 707–708, the Supreme Court of India had ordered the expunction of uncalled-for strictures made by Mulla J of the Allahabad High Court against the Indian Police Force. In ordering the expunction of the remarks, the Supreme Court observed:

> If there is one principle of cardinal importance in the administration of justice, it is this: the proper freedom and independence of judges and magistrates must be maintained and they must be allowed to perform their functions freely and fearlessly and without undue interference by anybody, even by this court. At the same time it is equally necessary that in expressing their opinions, judges and magistrates must be guided by considerations of justice, fair play and restraint. It is not infrequent that sweeping generalizations defeat the very purpose for which they are made. It has been judicially recognized that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before courts of law in cases to be decided by them, it is relevant to consider: *(a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself; (b) whether there is evidence on record bearing on that conduct justifying the remarks; and (c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on conduct.* It has also been recognized that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve. (Emphasis added.)
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> ... We do not think that in the present case we need go into the question as to the extent to which a judge or magistrate may draw upon his experience in assessing or weighing evidence or even in judging the conduct of a person. We recognize the existence of exceptional circumstances in a case where the judge or magistrate may have to draw upon his experience to determine what is the usual or normal conduct with regard to men and affairs. We say this with respect, but it appears to us that in the present case, even allowing for the great experience which the learned judge had in the matter of criminal trials, his statement that, 'There was not a single lawless group in the whole country whose record of crime came anywhere near the record of that organized unit which is known as the Indian Police Force', was wholly unwarranted and, if we may say so, betrayed a lack of judicial approach and restraint. The learned judge referred to no material on which this observation was based, nor did he say that his experience of criminal trials gave him an occasion to compare the records of crime of various lawless groups in the State vis-à-vis the Police Force. To characterize the whole Police Force of the State as a lawless group is bad enough; to say that its record of crime is the highest in the State is worse and coming as it does from a judge of the High Court, is sure to bring the whole administration of law and order into disrepute. For a sweeping generalization of such a nature, there must be a sure foundation and the necessity of the case must demand it. We can find neither in the present case. We think that the State Government was justifiably aggrieved by such a sweeping remark. Similar in nature is the remark about the stinking of 'every fish in the police force,

A barring, perhaps, a few'. The word 'perhaps' seems to indicate that even about a few, the learned judge had some doubt. We consider that these sweeping generalizations defeat their own purpose. They were not necessary for the disposal of the case against Mohammad Naim.

... For the reasons given above, we have come to the conclusion, a conclusion which justice demands, that the present case is one of those B exceptional cases where the inherent jurisdiction of the court should have been exercised and the remarks earlier referred to as (a), (b) and (c) should have been expunged. We accordingly allow the appeal and direct that the aforesaid remarks do stand expunged from the order of the learned judge dated 4 August 1961.

C In *Singer Sewing Machine v Jeremiah* [1972] 2 MLJ 56 at p 57, the High Court found that both the conduct of the appellant company and that of their solicitors to be wholly reprehensible. On appeal, the Federal Court whose decision was reported in the same law journal at p 199, held that the strictures by the High Court on the appellants and their solicitors were unwarranted, and allowed the appeal.

D It is stated in 1(1) *Halsbury's Laws of England* (4th Ed) para 84 as follows:

> Implicit in the concept of fair adjudication lie two cardinal principles, namely, that no man shall be judge in his own cause (*nemo judex in causa sua*), and that no man shall be condemned unheard (*audi alteram partem*). E These two principles, the rules of natural justice, must be observed by courts, tribunals, arbitrators, and all persons and bodies having the duty to act judicially, save where their application is excluded expressly or by necessary implication ...

In *AM Mathur v Pramod Kumar Gupta & Ors* [1990] 2 SCC 533, BM Lal J F of the Madya Pradesh High Court when dismissing an apparently unsustainable review petition, had made certain derogatory remarks against Mr AM Mathur, a senior advocate and also the ex-Advocate General of the State. The Supreme Court held at pp 538 and 539:

> Judicial restraint and discipline are as necessary to the orderly administration G of justice as they are to the effectiveness of the army. The duty of restraint, this humility of function should be a constant theme of our judges. This quality in decision-making is as much necessary for judges to command respect as to protect the independence of the judiciary. Judicial restraint in this regard might be better called judicial respect, that is, respect by the judiciary. Respect to those who come before the court as well as to other co- H ordinate branches of the State, the executive and the legislature. There must be mutual respect. When these qualities fail or when litigants and public believe that the judge has failed in these qualities, it will be neither good for the judge nor for the judicial process.
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> The Judge's Bench is a seat of power. Not only do judges have power to make binding decisions, their decisions legitimate the use of power by I other officials. The judges have the absolute and unchallengeable control of the court domain. But they cannot misuse their authority by intemperate comments, undignified banter of scathing criticism of counsel, parties or witnesses. We concede that the court had the inherent power to act freely

upon its own conviction on any matter coming before it for adjudication, but it is a general principle of the highest importance to the proper administration of justice that derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the case to animadvert on their conduct.

Learned judge having held that the High Court has no jurisdiction to entertain the review petition ought not to have commented on the professional conduct of the appellant and that too without an opportunity for him. We regret to note that the observations made and aspersions cast on the professional conduct of the appellant are not only without jurisdiction, but also they are wholly and utterly unjustifiable and unwarranted.

We therefore, allow the appeal and expunge all the remarks made by BM Lal J against the appellant in the impunged order.

Bhagwati CJ in *State of Madya Pradesh & Ors v Nandlal & Ors* [1986] 4 SCC 566 at p 615, in expressing his strong disapproval of the strictures made by the judge, stated:

> We may observe in conclusion that judges should not use strong and carping language while criticizing the conduct of parties or their witnesses. They must act with sobriety, moderation and restraint. They must have the humility to recognize that they are not infallible and any harsh and disparaging strictures passed by them against any party may be mistaken and unjustified and if so, they may do considerable harm and mischief and result in injustice. Here, in the present case, the observations made and strictures passed by BM Lal J were totally unjustified and unwarranted and they ought not to have been made.

We therefore would like to remind judges that they should refrain from criticizing another court, their brother judges and lawyers who have no opportunity to correct such injustice caused to them, which will have a detrimental effect on their characters and professional careers especially in cases like this where there is no evidence or cause to warrant their criticism, and where the judges of the Court of Appeal had no jurisdiction to hear an oral application when the motion for stay had been withdrawn. They must remember that they are themselves not infallible and should not use the Bench as a forum to pass harsh and disparaging strictures on others. Such conduct may be seen as being malicious, mischievous and irresponsible, and will bring the administration of justice into disrepute. Judges and magistrates must not only act neutral and fair, but be seen to act so. They should not jump into the arena and do battles with the parties, lest they may be blinded by the dust of the battle.

Cases need not be multiplied on this cardinal point. However, to highlight this vital principle, we would refer to *V Sujatha v State of Kerala* [1994] SCC Supp (3) 437 at p 448, where the Indian Supreme Court held:

> Therefore one of the main principles is that a judge should take special care in making disparaging remarks against a judge of a subordinate court or against a person or authority whose conduct comes in for consideration

before him in cases to be decided by him. Making uncalled-for remarks against the said persons or authorities would be a violation of judicial discipline.

We would therefore expunge the following remarks from the judgment of the Court of Appeal ([1995] 2 MLJ 734 at pp 738F–739C and 743H–744A):

> But this case is more than that. This is a case about an injustice which has been perpetrated by a court of law. This is also a case about abuse of the process of the High Court and therefore, it concerns the inherent power which any court of justice must possess to prevent misuse of its procedure and in which the court has a duty to exercise this salutary power.
>
> Although the ex parte mandatory injunction should not have been granted in the circumstances of this case in the first place, that is not the injustice which is revealed in this case. The injustice is manifest, it is to be seen in the form in which the order is framed, the terms of which pre-empt the defendants from exercising their right to apply to discharge an ex parte injunction obtained behind the backs of the defendants. Here, the plaintiffs through their legal advisers have abused the process of the High Court by instigating the injustice through misuse of the court's procedure by manipulating it in such a way that it becomes manifestly unfair to the defendants. By doing what they did, these unethical lawyers have brought the administration of justice into disrepute among right-thinking people.
>
> We do not think we can do better with this censure than to voice and emphasize the opening words of Lord Diplock in his judgment in the House of Lords in *Hunter v Chief Constable* [1982] AC 529 at p 536; [1981] 3 All ER 727 at p 729; [1981] 3 WLR 906 at p 909:
>
> > 'My Lords, this is a case about abuse of the process of the High Court. It concerns the inherent power which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people. The circumstances in which abuse of process can arise are very varied; those which give rise to the instant appeal must surely be unique. It would, in my view, be most unwise if this House were to use this occasion to say anything that might be taken as limiting to fixed categories the kinds of circumstances in which the court has a duty (I disavow the word discretion) to exercise this salutary power.'
>
> ...
>
> The fact that the proceedings were filed in the wrong division does not render the proceedings in any way invalid but may, coupled with other considerations in the present case, give the impression to right-thinking people that litigants can choose the judge before whom they wish to appear for their case to be adjudicated upon. This, we consider, may lead to very unhealthy negative thinking and since justice must not only be done but must also be seen to be done, it is incumbent on the trial judge, upon perusal of the pleadings, to have taken the initiative of transferring the proceedings to the right division so as to dispel any notion that he is partial to any party.

In expunging these totally unwarranted and unjustified remarks from the judgment of the Court of Appeal written on 31 July 1995, we must place on record of our disappointment and displeasure (to put it mildly), at the conduct of the three judges of the Court of Appeal for having without any justification criticized those who were not given the opportunity to defend or explain themselves.

We wish to remind judges and magistrates that where they find that an advocate handling any matter before them has grossly abused the process of court or acted in a highly unethical manner, the proper step to be taken is for them to lodge a report with the Legal Profession Disciplinary Board established under s 99(2) of the Legal Profession Act 1976, which will investigate the complaint and where both the accuser and the accused will be given a fair opportunity to state their cases.

Order accordingly.

Reported by Prof Ahmad Ibrahim